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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

JOHN B. YOUNG,

Petitioner,

vs.

CARL E. LANGLEY, WILBUR E. BOND,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JAMES M. PIDGEON (P26799)
Counsel for Respondents
2800 S. Woodward/Ste. 200
Bloomfield Hls., MI 48013
(313) 332-9256

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

FIRST ISSUE

Does a conflict exist among the Circuit Courts of Appeal in determining when to award prejudgment interest in § 1983 civil rights cases?

SECOND ISSUE

Does Title 42 U.S.C. § 1988 not mandate the award of pre-judgment interest premised upon the law of the forum?

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OPINIONS BELOW

Defendants-Respondents, Carl E. Langley and Wilbur E. Bond, adopt the Plaintiff-Petitioner's recitations of the Opinions Below.

———o———

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Defendants-Respondents, Carl E. Langley and Wilbur E. Bond, adopt the Plaintiff-Petitioner's recitations of the Constitutional and Statutory Provisions Involved.

———o———

JURISDICTION

Defendants-Respondents, Carl E. Langley and Wilbur E. Bond, accepts the statement of jurisdiction made by the Plaintiff-Petitioner.

———o———

STATEMENT OF THE CASE

Defendants-Respondents, Carl E. Langley and Wilbur E. Bond, do not contest the Statement of Case set forth by the Plaintiff-Petitioner for purposes of the instant Petition.

———o———

REASONS FOR DENYING THE WRIT

I.

No conflict exists among the Circuit Courts of Appeal in determining when to award pre-judgment interest in § 1983 civil rights cases.

Throughout his Brief in support of his contention that there exists a conflict among the Circuit Courts of Appeal on the issue of whether or not to award pre-judgment interest on § 1983 cases, the Petitioner has cited numerous cases relating to contract claims, Title VII back pay claims, and patent infringement cases that suggest disparate treatment of prevailing parties. The Petitioner has failed to present to this Court any conflict among the Circuits regarding the award of pre-judgment interest in § 1983 civil rights cases.

It is true that in cases where the District Court's jurisdiction is premised upon diversity that prejudgment interest is frequently awarded upon judgments. *Hamman v. Southwestern Gas Pipeline, Inc.*, 821 F.2d 299 (5th Cir. 1987). Jurisdiction in this case, however, was not premised upon diversity, but rather upon a federal question. As stated by the 6th Circuit in affirming the trial court's decision not to award prejudgment interest in this case:

> "This Circuit adheres to the rule that in an action based on federal question jurisdiction, the award of prejudgment interest is committed to the sound discretion of the trial court. *E.E.O.C. v. Wooster Brush Co. Employees Relief Assoc.*, 727 F.2d 566, 579 (6th Cir. 1984); *Bricklayer's Pension Trust Fund v. Taiariol*, 671 F.2d 988, 990 (6th Cir. 1982)."
> (Page A-3 of Petition).

The issue thus presented, is whether this Court should grant the Petitioner's Writ in order to determine whether District Courts should continue to exercise their discretion in determining the propriety of prejudgment interest in § 1983 cases, or, as suggested by Plaintiff, a mandatory rule should be adopted that removes from the District Courts their discretion in making such determinations.

In support of his contention, the Petitioner has mischaracterized certain case law. Without enumerating those instances, attention is called to Page 5 of the Petition wherein it is stated:

> "Once a victim of discrimination has proved his or her legal entitlement to a judgment for damages in a 42 U.S.C.A. § 1983 case, '. . . prejudgment interest should ordinarily be awarded absent some justification for withholding such an award. . .' *G.M.C. v. Devex.*"

Contrary to the suggestion made by the Petitioner, *G.M.C. v. Devex,* 461 U.S. 648, 76 L.Ed. 2d 211, 103 S. Ct. 2058 (1983) is not a §1983 case, but rather, is a patent infringement case.

G.M.C. v. Devex, supra, concerned itself with "the proper standard governing the award of prejudgment interest in a patent infringement suit under 35 U.S.C. § 284." 461 U.S. 649. This Court ruled that prejudgment interest should ordinarily be awarded in patent infringement cases in order to insure that the patent owner was placed in as good a position as he would have been had the infringer entered into a reasonable royalty agreement. This Court went on to state, however:

> "We do not construe § 284 as requiring the award of prejudgment interest whenever infringement is found. That provision states that interest shall be 'fixed by the court,' and in our view it leaves the court some discretion in awarding prejudgment interest. For example, it may be appropriate to limit prejudgment interest, or perhaps even deny it altogether, where the patent owner has been responsible for undue delay in prosecuting the lawsuit. There may be other circumstances in which it may be appropriate not to award prejudgment interest. We need not delineate those circumstances in this case. We hold only that prejudgment interest should be awarded under § 284 absent some justification for withholding such an award." 461 U.S. 656,657.

Thus, even though the Court found, based on statutory language which amended the patent laws and made reference to an award of interest upon recovery, that interest should be awarded in most patent infringement cases, the Court left to the discretion of the trial court whether or not interest should actually be awarded in any given case.

In the present case, as noted by the trial judge, Plaintiff received a substantial award. In determining whether or not prejudgment interest should be awarded in any given case, based upon the trial court's discretion, the 7th Circuit in *Williamson v. Handybutton Mac. Co.,* 817 F.2d 1290 (7th Cir. 1987), a case involving a claim for back pay brought pursuant to 42 U.S.C. § 1981, noted that prejudgment interest was part of full compensation under a variety of federal statutes which, the 7th Circuit indicated, was necessary to carry out the federal policies of compensation and deterrence. In explaining its decision to remand *Williamson, supra,* to the District Court for a determination of prejudgment interest, the Court stated:

"Money today is simply not a full substitute for the same sum that should have been paid some time ago. Prejudgment interest therefore must be an ordinary part of any award of back pay (or other incurred expense) under § 1981.

"'Ordinary' does not imply inevitable. *Devex* allowed that an award might be inappropriate at some times (citations omitted). Substantial, unexplained delay in filing suit might be such a reason because delay shifts the investment risk to the defendant, allowing the plaintiff to recover interest without bearing the corresponding risk. *Williamson,* though, filed this suit in 1978. The size of the jury's verdict may be another, if only the supposition that the jury has compensated plaintiff for the time value of money can explain the result. This verdict is not so large; it does not seem to cover even actual loss.

"There is one other reason why prejudgment interest may be denied—because 'the amount of back pay is not readily determinable.' '*Domingo v. New England Fish Co.*, 727 F.2d 1429, 1446 (9th Cir. 1984). Interest is not available on lost future wages and pensions; the time value of money is taken into account when these are discounted to present value. Only back pay and expenses incurred in the past may be augmented by prejudgment interest." *Williamson, supra,* 1297-1298.

Thus, even in cases involving claims for back pay, at least in cases where the amount of back pay is "readily ascertainable" claims for prejudgment interest may properly be denied in certain situations, included among them those in which the size of the verdict has succeeded in making the plaintiff whole. As noted by the District Court in the instant litigation, the Plaintiff in this action received a substantial award, which included punitive damages. No back pay was in issue in the instant case, and

certainly there was no amount of damages that could be deemed "readily ascertainable."

In the few § 1983 cases cited by the Plaintiff, included among them being *Furtado v. Bishop,* 604 F.2d 80 (1st Cir. 1979), *cert. den.* 444 U.S. 1035, 100 S. Ct. 710, 62 L.Ed. 2d 672, prejudgment interest has been deemed to be awardable in the sound discretion of the Court. Upon that rule there exists no conflict among the Circuits, and the contrary contention should not be a basis for granting a Writ of Certiorari.

II.

Title 42 U.S.C. § 1988 does not mandate the award of prejudgment interest premised upon the law of the forum.

As addressed in connection with Issue I, an award of prejudgment interest on § 1983 claims has been deemed throughout the United States to be vested in the sound discretion of the trial court. That discretion having been vested, there is no need to adopt a mandatory rule that will necessarily vary from state to state, which state statutes (presuming their existence in every state which is clearly not the case) would not have been enacted with the same congressional purpose involved in the enactment of § 1983 in mind.

The 1st Circuit in *Furtado v. Bishop,* 604 F.2d 80 (1st Cir. 1979), discussed the considerations to be made in any attempt to formulate a federal rule regarding prejudgment interest on § 1983 claims. It stated:

> "Declaring that a federal rule should govern prejudgment interest in civil rights actions under 42 U.S.C. § 1983 is easier than formulating a rule. There

> are, of course, three options: prejudgment interest could be (1) mandatory, (2) discretionary, or (3) barred. We find little to recommend a mandatory rule. The injury suffered by plaintiffs in civil rights actions are often intangible, and prejudgment interest will not always be necessary to compensate them fully. (Citation omitted). Assuming that prejudgment interest can also legitimately have a punitive purpose when a defendant has obstinately delayed payment to an injured party, (citations omitted) such interest will not be warranted in every case. By the same token, we have reservations about an inflexible rule barring prejudgment interest in a § 1983 action. Such a rule is arguably appropriate because § 1983 creates a species of tort liability, and prejudgment interest on the typical unliquidated tort claim was not recoverable at common law." *Furtado, supra,* at 97-98.

Thus, there are difficulties with any rule that is adopted. This Court, however, has already addressed the issue as to whether or not a state statute would mandate the award of interest in a case premised upon a federal claim. It ruled:

> "The rule governing interest to be recovered as damages for delayed payment of a contractual obligation to the United States is not controlled by state statute, or local, common law. In the absence of an applicable federal statute, it is for the federal courts to determine, according to their own criteria, the appropriate measure of damage, expressed in terms of interest, for non-payment of the amount found to be due." *Royal Indemnity Co. v. United States,* 313 U.S. 289, 296, 85 L.Ed. 2d 1361, 61 S. Ct. 995 (1941).

The Petitioner in this case would divest the Federal Courts of their discretion to determine whether or not prejudgment interest should be awarded. He would leave

to the individual decisions of state legislatures what interest, if any, should be awarded upon a claim based on a federal statute.

Resort to the state prejudgment interest law should only be had in a situation when, pursuant to 42 U.S.C. § 1988, Federal law on the subject is viewed as "deficient." *Robertson v. Wegmann,* 436 U.S. 584, 588, 198 S. Ct. 1991 (1978).

In *Furtado, supra,* as quoted at length by the Petitioner at pages 21 and 22 of his Petition, the Supreme Court has fashioned rules which granted or denied interest on particular statutory obligations by an appraisal of the congressional purpose in imposing them and in light of general principles deemed relevant.

To simply adopt as a Federal rule the requirement that Federal Courts look to state prejudgment interest statutes to determine what, if any, interest should be allowed on § 1983 claims, would remove from the Federal Courts their discretion to formulate remedies for the cases that come before them. It also would serve to deny interest to those individuals successful upon such claims in states that have no prejudgment interest statutes.

While the adoption of a state statute as the federal rule for prejudgment interest might make for a simpler rule, the proper rule is to continue to vest that decision-making process in the sound discretion of the trial court.

CONCLUSION

For the above reasons, the Defendants-Respondents, Carl E. Langley and Wilbur E. Bond, request that this Court deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

James M. Pidgeon (P26799)
Counsel for Respondents
2800 S. Woodward/Ste. 200
Bloomfield Hls., MI 48013
(313) 332-9256